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AVAYA INC.
307 MIDDLETOWN-LINCROFT ROAD
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LINCROFT, NJ 07738

In re Application of
Simon D. Boland
Application No. 09/813,525
Filed: March 21, 2001
For: VOICE-ACTIVITY DETECTION USING
ENERGY RATIOS AND PERIODICITY

**DECISION ON PETITION
TO WITHDRAW HOLDING OF
ABANDONMENT**

This is in response to the Petition to Withdraw Holding of Abandonment Based on Failure to Receive Office Action filed March 7, 2005.

The application became abandoned due to failure to timely respond to the non-final Office action mailed March 17, 2004. A Notice of Abandonment was mailed March 7, 2005.

Petitioner has alleged non-receipt of the non-final Office action. In the petition, the petitioner has provided a statement that the non-final Office action was not received by the petitioner and a copy of the docket record where the non-received Office action would have been entered had it been received and docketed.

In the absence of any irregularity in the mailing of an Office action, there is a strong presumption that the Office action was properly mailed to practitioner at the address of record. This presumption may be overcome by a showing that the Office action was not in fact received. The showing required to establish the failure to receive an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement. See "Withdrawing the Holding of Abandonment When Office Actions Are Not Received" 1156 Official Gazette 53 (November 16, 1993) and M.P.E.P. § 711.03(c). The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail.

Decision on Petition

A review of the record indicates that the non-final Office action was properly mailed to the practitioner of record at the correspondence address of record at the time of mailing. Thus, there was no irregularity in mailing the Office action on the part of the Patent and Trademark Office.

The petitioner states that the Office action was not received and attests that he has searched the file jacket of the above-identified application and that he has had the Avaya Docket Administrator search the docket records. However, the petition does not comply with the requirement of a successful petition to withdraw the holding of abandonment due to the lack of a statement from the Practitioner attesting to a personal search of the docket records and indicating that the Office action was not received.

Accordingly, the petition is **DENIED**.

Should petitioner desire reconsideration, he or she should supplement this petition with a statement as outlined above.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision and should provide the docket records and supplemental statement referencing the docket records as outlined above.



Doris To
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